U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

FILE: [redacted] Office: MIAMI, FLORIDA Date:

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Nicaragua who entered the United States without inspection or admission in 1984. The applicant was found to be inadmissible to the United States pursuant to § 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of several crimes involving moral turpitude. The record indicates that the applicant is the father of a twelve-year-old U.S. citizen daughter, and that he applied for adjustment of status pursuant to the Nicaraguan Adjustment and Central American Relief Act, Pub. Law 105-100 (NACARA). The applicant seeks a waiver of inadmissibility in order to reside in the United States.

The district director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen child. The application was denied accordingly. On appeal, counsel asserts that the district director failed to properly assess the extreme hardship factors applicable to the applicant's U.S. citizen daughter. Counsel also contends that the district director failed to consider the hardship factors applicable to the applicant's former spouse, and that the district director abused his discretion in labelling the applicant's convictions "serious" while failing to consider the positive factors in the applicant's favor. Counsel points out that on April 7, 2003, the applicant married a naturalized U.S. citizen who already had a child from a previous relationship and was expecting the applicant's baby in August 2004. It may thus be assumed that the applicant currently has two U.S. citizen children and one stepchild.

Section 212(a)(2)(A) of the Act states in pertinent part, that:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
>
> > (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) states in pertinent part that:

> (h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-
>
> > (1)(A) [I]t is established to the satisfaction of the Attorney General that-
> >
> > > (i) [T]he activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
> >
> > > (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
> >
> > > (iii) the alien has been rehabilitated; or

> (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien.

The applicant was convicted of: third degree grand theft and carrying a concealed firearm on December 21, 1988; obstructing police/fire on August 3, 1990; third degree grand theft of a vehicle and third degree grand theft on December 11, 1991; and third degree grand theft of a vehicle, third degree grand theft, criminal mischief, and possession of burglary tools on June 6, 1994. His most recent three convictions occurred less than 15 years prior to the adjudication of this application. The applicant is therefore statutorily ineligible for a waiver pursuant to § 212(h)(1)(A) of the Act. He is however, eligible to apply for a waiver of inadmissibility pursuant to § 212(h)(B) of the Act.

Regarding two of the concerns counsel brings up on appeal, the AAO notes that hardship to the applicant's ex-wife is not a factor for consideration in this analysis; the only qualifying relatives in the instant case are the applicant's U.S. citizen children and current wife. Also, since the district director determined that the applicant's child would not suffer extreme hardship upon the applicant's removal, it was not necessary to conduct a discretionary weighing of positive and negative factors.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999) the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

On appeal, counsel reiterates that the applicant's twelve-year-old daughter, who lives with the applicant's former wife, will suffer extreme emotional and economic hardship if the applicant is removed. Counsel notes

that the applicant's daughter is not doing well in school, and from this he draws the conclusion that she would suffer emotional hardship if the applicant is removed, because he will no longer be able to enjoy his current visitation rights. The record, however, provides no documentation in support of this claim. Counsel also maintains that the applicant's daughter would suffer economic hardship, but there is no evidence that the applicant would be unable to continue to contribute to her support after his removal.

Counsel also states that the applicant's current wife would suffer financial hardship if the applicant is removed, because her new baby would prevent her from working her former habitual hours and she would lack the financial contribution provided by the applicant. Again, there is no documentation to support the contention that the applicant's wife would be unable to make the necessary budgetary and/or household adjustments in the event the applicant is removed. The record does not reflect any reason why the applicant's wife cannot return to a full time work schedule, despite having an infant. Counsel also indicates that the applicant's wife, who is a native of Cuba, cannot accompany the applicant to Nicaragua, because she is not familiar with Nicaraguan culture. The record does not establish that the applicant's wife would be unable to become familiar with Nicaraguan culture, or that doing so would cause her to suffer extreme hardship. The record contains no evidence that the applicant's wife would suffer extreme hardship should she choose to relocate to Nicaragua, although she is not required to do so.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his U.S. citizen spouse and children would suffer hardship that was unusual or beyond that which would normally be expected upon removal. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.